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Edward C. Hostmann, Trustee in Bankruptcy (Risberg Truck Lines) and Oregon Teamsters Employers Trust and Joint Council of Teamsters No. 37 and affiliated Locals 57, 81, 223, 324, and 962 of the International Brotherhood of Teamsters, AFL-CIO. Cases 36-CA-7605 and 36-CA-7652

December 8, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon charges and amended charges filed by the Oregon Teamsters Employers Trust and the Unions on June 27, September 18, and October 10, 1995, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on October 10, 1995, against Edward C. Hostmann, Trustee in Bankruptcy (Risberg Truck Lines), the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges, amended charges, and complaint, the Respondent failed to file an answer.

On November 3, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On November 7, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 25, 1995, notified the Respondent that unless an answer was received by October 31, 1995, a Motion for Summary Judgment would be filed.

Although the Respondent is in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or au-

thority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. *Id.*, and cases cited therein.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Oregon corporation with offices and place of business in Portland, Oregon, was, at all material times, engaged in the business of short haul trucking in the States of Washington, Oregon, and Idaho. During the 12-month period preceding issuance of the complaint, a representative period, the Respondent had gross sales of goods and services valued in excess of \$500,000, and sold and shipped goods or provided services from its facilities within the State of Oregon to customers outside that State, or to customers within that State, which customers were themselves engaged in interstate commerce by other than indirect means, of a total value in excess of \$50,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All short haul drivers, dockmen, loaders, helpers, checkers-forklift operators, pick-up and delivery drivers, casual drivers, casual dockmen, cashiers, payroll clerks, billing clerks and switchboard operators employed by the employer at its Oregon locations, excluding all other employees, guards and supervisors as defined in the Act.

Since at least 1992 and at all material times, the Unions, jointly, have been the designated exclusive collective-bargaining representative of the unit and have been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from February 16, 1992, through March 31, 1994 (the 1992-1994 Agreement). At all material times since at least 1992, based on Section 9(a) of the Act, the Unions, jointly, have been the exclusive collective-bargaining representative of the unit.

On September 1, 1995, a petition for liquidation under Chapter 7 of the Bankruptcy Code (11 U.S.C. Sec. 701 et seq.) was filed against the Respondent. The United States Trustee for the Chapter 7 bankruptcy is Edward C. Hostmann.

The 1992-1994 Agreement requires the Respondent to contribute \$1.95 per hour up to 2080 annual hours for each unit employee on a monthly basis to the Western Conference of Teamsters Pension Trust (Pension Trust) and incorporates by reference the Western States Area Supplemental Agreement and the Western Conference of Teamsters Pension Trust Fund Rules and Procedures that require payment of liquidated damages and interest. The 1992-1994 Agreement also requires the Respondent to contribute \$360.59 per month for each unit employee who worked or was compensated for 40 hours or more in the preceding month to the Health and Welfare Trust, and incorporates by reference the Western States Area Supplemental Agreement Common Clause, article 52, and the Trust Agreement for the Trust that require payment of liquidated damages and interest. Since May 1, 1995, and continuing to date, the Respondent has failed to make the contributions and pay the liquidated damages and interest for hours worked by unit employees during April, May, and June 1995. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording them an opportunity to bargain with the Respondent with respect to this conduct and effects of this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the Unions as the unit employees' exclusive bargaining representative, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the Pension Trust and the Health and Welfare Trust and pay the liquidated damages and interest for April, May, and June 1995, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in ac-

cordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

ORDER

The National Labor Relations Board orders that the Respondent, Edward C. Hostmann, Trustee in Bankruptcy (Risberg Truck Lines), Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to make contractually required contributions to the Pension Trust and the Health and Welfare Trust or to pay the liquidated damages and interest for hours worked by unit employees:

All short haul drivers, dockmen, loaders, helpers, checkers-forklift operators, pick-up and delivery drivers, casual drivers, casual dockmen, cashiers, payroll clerks, billing clerks and switchboard operators employed by the employer at its Oregon locations, excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all delinquent contributions to the Pension Trust and the Health and Welfare Trust and pay the liquidated damages and interest, for April, May, and June 1995, and make whole its unit employees for any expenses ensuing from its failure to make the contractually required contributions, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(c) Post at its facility in Portland, Oregon, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. December 8, 1995

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to make contractually required contributions to the Pension Trust and the Health and Welfare Trust or to pay the liquidated damages and interest for hours worked by our unit employees:

All short haul drivers, dockmen, loaders, helpers, checkers-forklift operators, pick-up and delivery drivers, casual drivers, casual dockmen, cashiers, payroll clerks, billing clerks and switchboard operators employed by us at our Oregon locations, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all delinquent contributions to the Pension Trust and the Health and Welfare Trust and pay the liquidated damages and interest, for April, May, and June 1995, and make whole our unit employees for any expenses ensuing from our failure to make the contractually required contributions, in the manner set forth in a decision of the National Labor Relations Board.

EDWARD C. HOSTMANN, TRUSTEE IN
BANKRUPTCY (RISBERG TRUCK LINES)